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Wrongful Convictions

Volume Two

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Kent Roach

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Clive Walker, "Miscarriages of Justice in Principle and Practice", in Clive Walker and Keith Starmer, *Miscarriages of Justice: A Review of Justice in Error* (1999), pp.31-55 1

Huff, Rattner and Sagarin, *Convicted But Innocent Wrongful Conviction and Public Policy* (1996), pp.10-20, 53-67 14

Huff "Wrongful convictions and public policy" (2002) 40 Criminology 1-18 27

R v Burns and Rafay (2001), 151 C.C.C. (3d) 97 at paras 1-3, 70, 71, 95-117 (S.C.C.) 34

Roach and Trotter "Miscarriages of Justice in the War Against Terrorism" (2005) 109 Penn State L. Rev. 967 45

C. Ronald Huff "What Can We Learn From Other Nations About the Problem of Wrongful Convictions (2002) 86 Judicature 91 83

Ronald Dworkin "Principle, Policy and Procedure" in *A Matter of Principle* (Cambridge: Harvard University Press, 1985) ch. 3 90

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Hon. Peter deC. Cory, *The Inquiry Regarding Thomas Sophonow – The Investigation, Prosecution and Consideration of Entitlement to Compensation* (Winnipeg: Manitoba Justice, 2001) (henceforth Sophonow Inquiry) 104

Jill Copeland, "Helping Jurors Recognize the Frailties of Eyewitness Identification Evidence" (2002), 46 C.L.Q. 187 125

J. Grano "A Legal Response to the Inherent Dangers of Eyewitness Identification Testimony" in Wells and Loftus, *Eyewitness Testimony* (1984) 136

R. v. McIntosh (1997), 117 C.C.C. (3d) 385 (Ont.C.A.) 149

R. v. Hibbert 2002 SCC 39 at paras 1-53, 77-93 157

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Edmund Higgins and Bruce Skinner "Establishing the Relevance of Expert Testimony Regarding Eyewitness Identification" (2003) N.Ky. L.Rev. 471 212

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Hon. F. Kaufman (Chair), *Report of the Commission on Proceedings Involving Guy Paul Morin* (Toronto: Ontario Ministry of the Attorney General, 1998) at 556-642 (henceforth Kaufman Report) 228

Chris Sherrin, "Jailhouse Informants in the Canadian Criminal Justice System, Part II: Option for Reform" (1998), 40 C.L.Q. 157-186 271

R. v. Brooks (2000), 141 C.C.C. (3d) 321 (S.C.C.) 287

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Richard A. Leo, "False Confessions: Causes, Consequences, and Solutions" in Westervelt and Humphrey, *Wrongly Convicted: Perspectives on Failed Justice* (2001) 312

Paul G. Cassell, "Protecting the Innocent from False Confessions and Lost Confessions—and from Miranda" (1998), 99 J. Crim. L. & Criminology 497 321

R. v. Oickle (2001), 147 C.C.C. (3d) 321 (S.C.C.) 352

R. v. Ahmed (2003), 170 C.C.C. (3d) 27 (Ont. C.A.) 359

Gary Trotter, "False Confessions and Wrongful Convictions" (2005) 52 Univ. of Ottawa L.Rev. 181 364

Christopher Sherrin, "False Confessions and Admissions in Canadian Law" (2005), 30 Queens L.J. 602 380

Chapter Five: Forensic Evidence and DNA

Kaufman Report, pp.249-291, 300-311 410

U.S. Dept of Justice, *Convicted by Juries, Exonerated by Science* (1996) at 12-32 465

Scheck and Neufeld, "DNA and Innocence Scholarship" in Westervelt 487

G. Edmond, "Construing Miscarriages of Justice" (2003), 22 Oxford J. of Legal Studies 53 494

R. v. J.(J-L.) (2000), 148 C.C.C. (3d) 487 (S.C.C.) (headnote) 531

Stephen Odgers and James Richardson, "Keeping Bad Science out of the Courtroom" (1995) 18 Univ. of New South Wales L.J. 108 534

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Kaufman Report, pp.1117-1127, 1136-1138, 1191-1201 11

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Illinois Commission on Capital Punishment, ch 2. 34

Epp, "Penetrating Police Investigative Practice Post *Morin*" (1997) 31 U.B.C.L.Rev. 65

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Roach, *Due Process and Victims' Rights* (1999) 209

R. v.Pan, R. v. Sawyer [2001] 2 S.C.R. 344 (headnote) 212
B. Gershman "How Juries Get it Wrong" (2005), Washburn Law Journal 216

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Kate Malleson, "Miscarriages of Justice and the Accessibility of the Court of Appeal" [1991] Crim.L.R. 323 249

R. Nobles, D. Schiff and N. Shaldon, "The Inevitability of Crisis in Criminal Appeals" (1993) 21 Int. J of Sociology of Law 1-23 225

Kaufman Report, pp. 1178-1193 265

Patricia Braiden and Joan Brockman, "Remedying Wrongful Convictions Through Applications to the Minister of Justice Under Section 690 of the Criminal Code" (1999) 17 W.Y.B.Access to Justice 3 273
Department of Justice, *Addressing Miscarriages of Justice: Reform Possibilities for Section 690 of the Criminal Code* (1998) 290
331

Criminal Code ss. 696.1-696.6
Lawrence Marshall, "Do Exonerations Prove that the System Works?" (2002) 86 Judicature 84. 314
Nicholas Berg, "Turning A Blind Eye To Innocence: The Legacy Of Herrera v. Collins" (2005), 42 Am. Crim. L. Rev. 121 568
Samuel R. Gross et al, "Exonerations in the United States 1989 Through 2003" (2005), Journal of Criminal Law and Criminology 321

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L. Griffin "The Correction of Wrongful Convictions: A Comparative Perspective" (2001) 16 Am. U. Int. L.Rev. 1241 337

Runicman Report, pp. 180-187 373

Annabelle James et al, "The Criminal Cases Review Commission: Economy, Effectiveness and Justice" [2000] Crim.L.Rev. 140 381

L.H. Leigh, "Correcting Miscarriages of Justice: The Role of the Criminal Cases Review Commission" (2000) 38 Alta. L. Rev. 365 388

See www.ccrc.gov.uk for the Commission's helpful web site

Marshall Inquiry, pp.143-146 395
Jospeh Hoffman, "Protecting the Innocent: The Massachusetts Governor's Council Report" (2005), Journal of Criminal Law and Criminology 399

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Rob Warden, "The Revolutionary Role of Journalism in Identifying and Rectifying Wrongful Convictions" (2002) 70 UMKC L.Rev. 803 402

Mark Stephens and Peter Hill, "The Role and Impact of Journalism" in Walker and Starmer 424

See www.innocenceproject.org

See www.aidwyc.org

K. Roach, "Inquiring into Wrongful Convictions" (1999) 35 Crim. L. Bulletin 152 436

B. Scheck and P. Neufeld, "Toward the Formation of 'Innocence Commissions' in America" (2002) 86 Judicature 98 445

R. Nobles and D. Schiff, "Optimism Writ Large: A Critique of the Runciman Commission on Criminal Justice" in McConville and Bridges, *Criminal Justice in Crisis* (1994) 458
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P. Hillyard, "The Politics of Criminal Injustice: The Irish Dimension" in McConville and Bridges

Kathryn M. Campbell, "Policy Responses to Wrongful Conviction in Canada: The Role of Conviction Review, Public Inquiries and Compensation" (2005) Criminal Law Bulletin 468

Evan J. Mandery, "Efficiency Considerations of Compensating the Wrongfully Convicted" (2005), Criminal Law Bulletin 492

Sophonow Inquiry 507

Hon. Justice Michael Kirby, "Miscarriages of Justice — Our Lamentable Failure" [1991] Denning L.J. 97 540

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